

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

XEZAKIA ROUSE,

Plaintiff,

v.

LAURA BELTRAN,

Defendant.

No. 2:21-cv-1085-JAM-KJN PS

ORDER TO SHOW CAUSE

This case comes before the court on plaintiff's motion to proceed in forma pauperis ("IFP") with his complaint filed June 21, 2021.¹ (ECF Nos. 1-2.) See 28 U.S.C. § 1915 (authorizing the commencement of an action "without prepayment of fees or security" by a person that is unable to pay such fees). Plaintiff brings this complaint against Laura Beltran, a staff member for a California state Assemblymember, for allegedly improperly sharing plaintiff's personal contact information with a local city attorney in Napa.

The undersigned declines to rule at this time on the IFP motion because an initial review of the complaint indicates that this district, the Eastern District of California, may not be the proper venue for this case. Instead, the court orders plaintiff to show cause why this action

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¹ Because plaintiff is self-represented, this action proceeds before the undersigned pursuant to Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 should not be dismissed without prejudice or transferred to the U.S. District Court for the
2 Northern District of California.

3 Venue in a civil action is generally proper in (1) a judicial district where any defendant
4 resides, if all defendants reside in the same State in which the district is located, (2) a judicial
5 district in which a substantial part of the events or omissions giving rise to the claim occurred, or
6 (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the
7 action is commenced, if there is no district in which the action may otherwise be brought.
8 28 U.S.C. § 1391(b). Defects in venue may be raised by the court on its own where a defendant
9 has not yet responded to the complaint and the time for doing so has not expired. See Costlow v.
10 Weeks, 790 F.2d 1486, 1488 (9th Cir. 1986). When a case is filed in the wrong district, the court
11 “shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in
12 which it could have been brought.” 28 U.S.C. § 1406(a).

13 As to the first option, venue is not shown to be proper in this district based on residency
14 because the complaint does not definitively allege where Ms. Beltran, the lone defendant, resides.
15 See 28 U.S.C. § 1391(b)(1) (venue is proper in “a judicial district in which any defendant resides”
16 if all defendants live in state). A natural person is deemed to reside in the judicial district in
17 which she is “domiciled.” 28 U.S.C. § 1391(c)(1). “A person’s domicile is her permanent home,
18 where she resides with the intention to remain or to which she intends to return.” Gaudin v.
19 Remis, 379 F.3d 631, 636 (9th Cir. 2004). The complaint states that defendant’s “address is listed
20 at” a State Capitol post office box in Sacramento, California. (ECF No. 1 at 1.) However, that is
21 clearly not her home. Elsewhere in the complaint, plaintiff implies that defendant lives in Napa
22 County by alleging that she “assisted Napa Officials, whom she lives in the community
23 with” (Id. at 3.) Napa County lies within the Northern District of California, not the Eastern
24 District of California.

25 As to the second option, under § 1391(b)(2), venue can be proper if the action is filed in
26 “a judicial district in which a substantial part of the events or omissions giving rise to the claim
27 occurred, or a substantial part of [the] property that is the subject of the action is situated.”
28 28 U.S.C. § 1391(b)(2). The current complaint does not indicate that the events at issue took

1 place in this judicial district, or that there is any property at issue in this case. Plaintiff brings
2 various invasion-of-privacy claims and an equal protection claim against defendant Beltran, who
3 is a staff person for State Assemblymember Cecilia Aguiar-Curry. (ECF No. 1 at 1, 4-5.) The
4 privacy claims arise from Ms. Beltran's alleged act of forwarding plaintiff's home address and
5 phone number to the Napa Assistant City Attorney after plaintiff contacted the
6 Assemblymember's office with a request to audit the Napa Special Investigations Bureau; and the
7 equal protection claim arises from Ms. Beltran's alleged refusal to assist plaintiff further with his
8 request upon learning that he is a resident of Ohio and no longer a constituent of the
9 Assemblymember. (Id. at 4-5, 9.)

10 One of the attachments to the complaint is a copy of Ms. Beltran's email to plaintiff
11 requesting an explanation of his request along with his home address and phone number. (Id.
12 at 9, Ex. A.) The signature line of the email reflects that Ms. Beltran is a Senior Field
13 Representative for Assemblymember Aguiar-Curry and works in the district office located at
14 2721 Napa Valley Corporate Drive in Napa, California. (Id.) This indicates that both of the
15 complained-of actions by Ms. Beltran (her emails regarding plaintiff's contact information, and
16 her subsequent refusal of plaintiff's request) took place at her work site in Napa, California,
17 which again is located in the Northern District of California, not the Eastern District of California.

18 Plaintiff asserts that venue is proper in this district because "the final decision" regarding
19 his request came from Sacramento, California—the "principal office where the defendant reports
20 to." (Id. at 2.) Later, plaintiff states that he "appealed" Ms. Beltran's refusal to "the highest
21 levels in Sacramento" but was denied. (Id. at 4.) The allegation that a "final decision" was made
22 in Sacramento does not make venue proper in this district, however, because plaintiff is only
23 suing Ms. Beltran herself for the two sets of actions identified above. The complaint indicates
24 that both Ms. Beltran's conveyance of plaintiff's contact information and her subsequent refusal
25 of plaintiff's request originated in Napa. Therefore, under the current complaint, it cannot be said
26 that "a substantial part" of the events giving rise to plaintiff's claims occurred in this district. See
27 28 U.S.C. § 1391(b)(2).

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1 The last way venue can be proper is “if there is no district in which an action may
 2 otherwise be brought” as provided in subsections (b)(1) and (b)(2), then venue is proper in “any
 3 judicial district in which any defendant is subject to the court’s personal jurisdiction with respect
 4 to such action.” 28 U.S.C. § 1391(b)(3). This district does not appear proper under § 1391(b)(3),
 5 however, because the action could have been brought in the Northern District of California under
 6 subsection (b)(2) as just explained.

7 When a case is filed in the wrong district, the district court “shall dismiss, or if it be in the
 8 interest of justice, transfer such case to any district or division in which it could have been
 9 brought.” 28 U.S.C. 1406(a). Alternatively, even if venue is proper, “[f]or the convenience of
 10 parties and witnesses, in the interest of justice, a district court may transfer any civil action to any
 11 other district or division where it might have been brought.” 28 U.S.C. § 1404(a); see Singh v.
 12 Cissna, No. 1:18-cv-0782-SKO, 2018 WL 4182602, at *3 (E.D. Cal. Aug. 30, 2018) (noting
 13 court’s authority to transfer a case, on the court’s own motion, to another district under § 1404(a),
 14 “so long as the parties are first given the opportunity to present their views on the issue”).

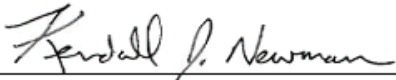
15 Plaintiff is therefore ORDERED TO SHOW CAUSE why this action should not be
 16 dismissed for improper venue or transferred to the U.S. District Court for the Northern District of
 17 California under 28 U.S.C. §§ 1404(a) or 1406(a). **Within fourteen (14) days of the date of**
 18 **entry of this order, plaintiff shall file a written response.** Plaintiff’s response shall be filed as
 19 a separate memorandum and shall indicate why the case should remain here in the Eastern
 20 District of California.²

21 ² The court also advises plaintiff that, separate from the venue issue, there are several problems
 22 with the complaint that will likely require amendment before a court considers directing service
 23 of the complaint on defendant. The court does not analyze the complaint in detail here because
 24 that analysis is best reserved for the transferee court, if the undersigned concludes that transfer is
 25 warranted. Briefly, however, it appears that the Federal Privacy Act of 1974 does not apply to
 26 defendant Beltran because “the Act is specifically limited to actions against agencies of the
 27 United States Government.” Unt v. Aerospace Corp., 765 F.2d 1440, 1447 (9th Cir. 1985); see
 28 5 U.S.C. § 552a(a)(1). Further, it is unlikely that any court would accept plaintiff’s passing
 references to various state privacy statutes and constitutional provisions as satisfying Rule 8 of
 the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 8(a)(2) (requiring a “short and plain
 statement” of each claim); Dura Pharms., Inc. v. Broudo, 544 U.S. 336, 346 (2005) (“[T]he ‘short
 and plain statement’ must provide each defendant with fair notice of what the plaintiff’s claim is
 and the grounds upon which it rests.”). And finally, the majority of the relief plaintiff requests is

ORDER

Accordingly, IT IS HEREBY ORDERED that, within 14 days of the entry of this order, plaintiff shall file a brief showing cause why this action should not be dismissed for improper venue or transferred to the Northern District of California under 28 U.S.C. §§ 1404(a) or 1406(a).

Dated: August 11, 2021


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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directed toward the Napa Special Investigations Bureau, which is not a defendant in this action. (ECF No. 1 at 6-7 (seeking an order for the NSIB to be disbanded and audited, among other things).) Such relief is not available in a suit against Ms. Beltran, who is not a member or agent of the NSIB.